

2003009370
01/23/2003 02:06 PM

WELL EASEMENT AGREEMENT
(Spruce Mountain Property – Douglas County)



2003009370 10 PGS

22ND THIS WELL EASEMENT AGREEMENT (the "Well Agreement") is made this day of January, 2003, by and between **EAGLE POINTE DEVELOPMENT, L.L.C.**, a Colorado limited liability company, Attention: Mr. Rex Weimer, 8480 East Orchard, #1100, Greenwood Village, CO 80111, and its successors in interest and assigns ("**Eagle Pointe**"), and (1) the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO** (the "**County**"), and (2) **THE CONSERVATION FUND** a Maryland nonprofit corporation, having an address 1800 North Kent Street, Suite 1120, Arlington, VA 22209 Attention: General Counsel (the "**Fund**"), and their successors in interest and assigns. Collectively the County and the Fund are referred to as the "**Grantor**". The following exhibits are attached hereto and made a part of this Agreement:

- | | | |
|-------------|---|--|
| Exhibit A | - | Description of Spruce Mountain Parcel |
| Exhibit A-6 | - | Description of Well Easement Area |
| Exhibit B-3 | - | Map of Well Easement Area |
| Exhibit F | - | Description of Eagle Pointe Severable Water Rights |

RECITALS:

- A. The Fund acquired the Spruce Mountain Parcel, described on the attached **Exhibit A**, from Eagle Pointe on January 22, 2003. The Fund intends to convey the Spruce Mountain Parcel to the County within the next 6-12 months.
- B. As part of the consideration for the transactions described in Recital A above, the parties have agreed to enter into this Well Easement Agreement, for the property described on the attached **Exhibit A-6** and depicted on the attached **Exhibit B-3** (the "**Well Easement Area**").

AGREEMENT:

1. **Well Easement**. The Fund hereby grants to Eagle Pointe a perpetual, non-exclusive easement over and across the Well Easement Area, for the purpose of permitting Eagle Pointe to sever, develop, use and export the water and water rights owned by Eagle Pointe and described on the attached **Exhibit F** (the "**Severable Water**"), by means of up to a maximum of two operating well fields (which each may include up to 3 then-operating wells) at any one time, to be located, or relocated from time to time, and drilled on the Well Easement Area. Eagle Pointe shall notify Grantor in writing thirty (30) days prior to commencing any drilling, redrilling, or constructing any water facilities, pipelines or utilities, or undertaking any other activities permitted or required hereunder.

Return to: Cheryl Matthews
Director of Open Space & Natural Resources
100 Third Street
Castle Rock CO 80104

2. Water Rights Restrictions. Use and development of the Severable Water by Eagle Pointe and by its successors and assigns are subject to the "**Water Rights Restrictions**" described in paragraph 4.8 of the Deed of Conservation Easement granted by Eagle Pointe to the County and the Fund, encumbering nearby property, which Deed of Conservation Easement is dated January 22, 2003 and which was recorded on January 23, 2003, in Book _____ at Page _____ as Reception No. 20033009348 of the records of the Douglas County Colorado Clerk and Recorder (the "**Conservation Easement**"), which are hereby incorporated by reference. The Water Rights Restrictions described in the Conservation Easement shall apply to Eagle Pointe, the Severable Water and this Well Easement Agreement as though full set forth herein.
3. Responsibility of Eagle Pointe. Eagle Pointe shall hold harmless and indemnify Grantor and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively the "**Grantor Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Well Easement Area or the Spruce Mountain Parcel, by Eagle Pointe its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them, except to the extent due to the negligence or willful misconduct of any of the Grantor Indemnified Parties; and (2) the failure by Eagle Pointe to perform its obligations hereunder.
4. Successors. This Well Easement Agreement is binding upon the successors in interest and assigns of each of the parties.
5. Amendment of Agreement. This Well Easement Agreement may be amended only by written agreement, signed by each of the parties.

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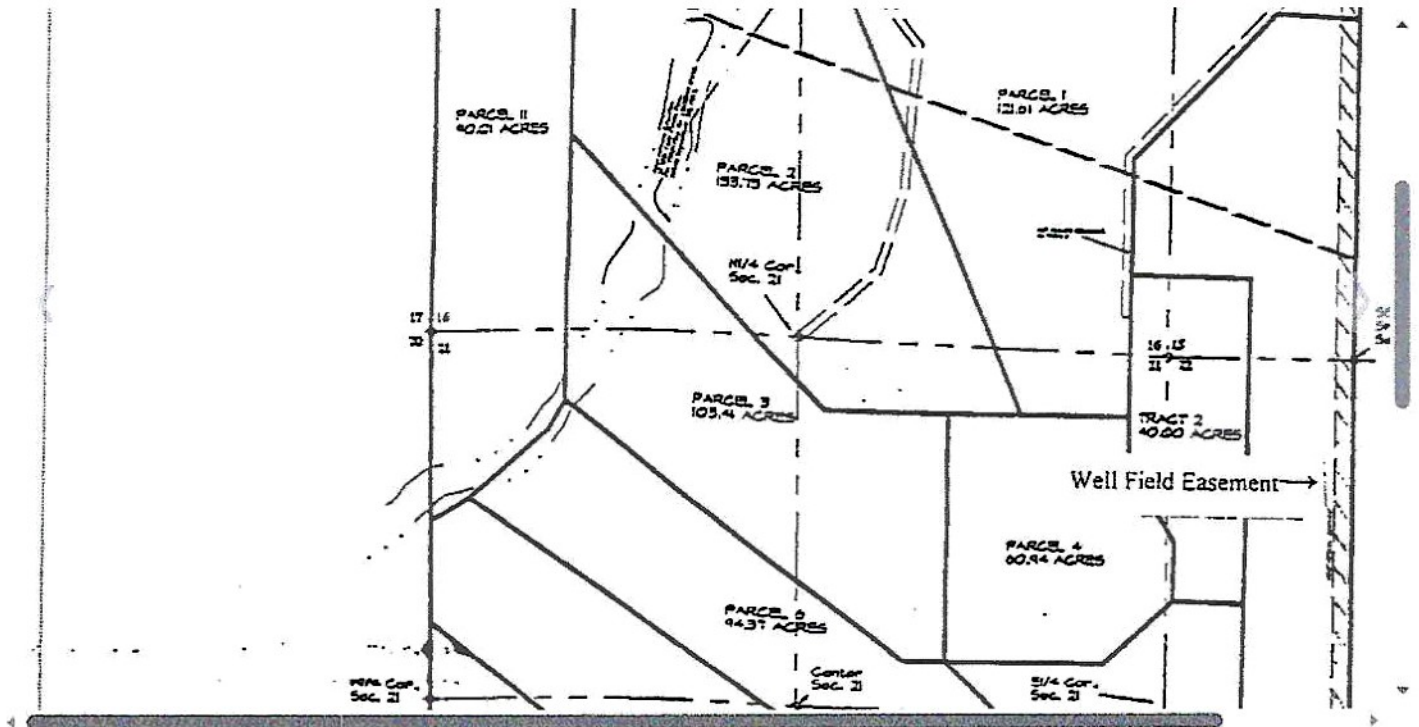
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DAVID E. ARCHER & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS & ENGINEERS

105 Wilcox Street • Castle Rock, CO 80104
PHONE (303) 688-4642 • FAX (303) 688-4675 • darchsurv@aol.com

Exhibit "A" - Page 1 of 2

November 21, 2002
Job No. 99-1308
Page 1 of 2 pages
Rev: December 26, 2002

PROPERTY DESCRIPTION: TRACT 1 (420.00 ACRES)

A tract of land situated in Sections 15, 21, 22, 28 and 29, Township 10 South, Range 67 West of the 6th Principal Meridian, Douglas County, Colorado, more particularly described as follows;

Beginning at the Northeast corner of Section 28 and considering the East line of the North ½ of the North ½ of Section 28 to bear S 00°12'31"E with all bearings contained herein relative thereto;

Thence S 00°12'31"E a distance of 1311.87 feet to the Southeast corner of said North ½ of the North ½;

Thence S 89°57'39"W along the South line of said North ½ of the North ½ a distance of 2515.35 feet;

Thence S 69°15'35"W a distance of 370.00 feet;

Thence S 80°30'00"W a distance of 713.00 feet;

Thence N 26°50'00"W a distance of 158.00 feet;

Thence N 00°45'00"W a distance of 107.00 feet to the South line of the North ½ of the North ½ of Section 28;

Thence S 89°57'47"W along said South line a distance of 1705.15 feet;

Thence along the boundary of Spruce Mountain Estates Unit 2, for the next 8 (eight) courses;

1. Thence N 00°18'36"W a distance of 428.00 feet;
2. Thence S 89°41'24"W a distance of 761.97 feet;
3. Thence S 00°18'36"E a distance of 428.00 feet;
4. Thence S 89°41'24"W a distance of 570.00 feet;
5. Thence S 00°02'00"W a distance of 660.00 feet;
6. Thence S 89°41'24"W a distance of 715.00 feet;
7. Thence N 00°01'40"E a distance of 420.00 feet;
8. Thence S 89°41'24"W a distance of 605.00 feet to the East Right of Way line of County Road 105;

Thence N 00°08'54"W along said East Right of Way line a distance of 157.05 feet;

Thence N 89°41'24"E a distance of 823.61 feet;

Thence N 62°12'56"E a distance of 1184.45 feet;

Thence N 89°41'24"E a distance of 1648.67 feet;

Thence N 01°00'47"E a distance of 224.61 feet;

Thence N 71°12'33"E a distance of 2049.71 feet;

Thence N 47°09'11"E a distance of 1515.52 feet;

Thence N 02°55'38"E a distance of 709.48 feet;



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Exhibit "A-6"
Page 1 of 1

November 26, 2002
Job No. 99-1308
REV: January 21, 2003

PROPERTY DESCRIPTION: (OF WELL FIELD EASEMENT)

The East 150.00 feet of the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 22 and the East 150.00 feet of the West $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 15, Township 10 South, Range 67 West of the 6th Principal Meridian, Douglas County, Colorado.

This property description was prepared under the direct supervision of David E. Archer
(P.L.S.-6935), 105 Wilcox Street, Castle Rock, CO 80104.

rev. 01/21/03